

AMENDED IN ASSEMBLY APRIL 26, 2011

CALIFORNIA LEGISLATURE—2011–12 REGULAR SESSION

## ASSEMBLY BILL

**No. 766**

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**Introduced by Assembly Member Monning**  
**(Principal coauthor: Assembly Member Bill Berryhill)**

February 17, 2011

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An act to ~~add Section 64.6 to~~ amend Section 1776 of the Labor Code, relating to ~~labor law enforcement~~ public works.

### LEGISLATIVE COUNSEL'S DIGEST

AB 766, as amended, Monning. ~~Labor law enforcement. Public works: payroll records.~~

*Existing law requires each contractor and subcontractor on a public works project to keep payroll records regarding his or her employees, and requires that these records contain information specified by the Division of Labor Standards Enforcement. Existing law requires certain personal identification information, as specified, to be removed when certified payroll records are made available for inspection to the public or to a public agency.*

*This bill would exempt certified payroll records made available for inspection to an agency included in, and for the purposes of, the Joint Enforcement Strike Force on the Underground Economy, or to any law enforcement agency, from the requirement that certain personal identification information be removed.*

~~Existing law establishes the Department of Industrial Relations, led by the Director of Industrial Relations, and charges that agency with the responsibility for enforcing labor standards, occupational safety and health standards, and other provisions of law relating to the welfare of wage earners.~~

~~This bill would provide that nothing in the Labor Code shall limit the authority of the Attorney General or the district attorney of any county to prosecute civil or criminal actions for violations of that code, or to enforce the provisions of that code, without specific direction from the director.~~

Vote: majority. Appropriation: no. Fiscal committee: no.  
State-mandated local program: no.

*The people of the State of California do enact as follows:*

1     SECTION 1. Section 1776 of the Labor Code is amended to  
2     read:

3     1776. (a) Each contractor and subcontractor shall keep accurate  
4     payroll records, showing the name, address, social security number,  
5     work classification, straight time and overtime hours worked each  
6     day and week, and the actual per diem wages paid to each  
7     journeyman, apprentice, worker, or other employee employed by  
8     him or her in connection with the public work. Each payroll record  
9     shall contain or be verified by a written declaration that it is made  
10    under penalty of perjury, stating both of the following:

11    (1) The information contained in the payroll record is true and  
12    correct.

13    (2) The employer has complied with the requirements of  
14    Sections 1771, 1811, and 1815 for any work performed by his or  
15    her employees on the public works project.

16    (b) The payroll records enumerated under subdivision (a) shall  
17    be certified and shall be available for inspection at all reasonable  
18    hours at the principal office of the contractor on the following  
19    basis:

20    (1) A certified copy of an employee's payroll record shall be  
21    made available for inspection or furnished to the employee or his  
22    or her authorized representative on request.

23    (2) A certified copy of all payroll records enumerated in  
24    subdivision (a) shall be made available for inspection or furnished  
25    upon request to a representative of the body awarding the contract,  
26    the Division of Labor Standards Enforcement, and the Division  
27    of Apprenticeship Standards of the Department of Industrial  
28    Relations.

29    (3) A certified copy of all payroll records enumerated in  
30    subdivision (a) shall be made available upon request by the public

1 for inspection or for copies thereof. However, a request by the  
2 public shall be made through either the body awarding the contract,  
3 the Division of Apprenticeship Standards, or the Division of Labor  
4 Standards Enforcement. If the requested payroll records have not  
5 been provided pursuant to paragraph (2), the requesting party shall,  
6 prior to being provided the records, reimburse the costs of  
7 preparation by the contractor, subcontractors, and the entity through  
8 which the request was made. The public may not be given access  
9 to the records at the principal office of the contractor.

10 (c) The certified payroll records shall be on forms provided by  
11 the Division of Labor Standards Enforcement or shall contain the  
12 same information as the forms provided by the division. The  
13 payroll records may consist of printouts of payroll data that are  
14 maintained as computer records, if the printouts contain the same  
15 information as the forms provided by the division and the printouts  
16 are verified in the manner specified in subdivision (a).

17 (d) A contractor or subcontractor shall file a certified copy of  
18 the records enumerated in subdivision (a) with the entity that  
19 requested the records within 10 days after receipt of a written  
20 request.

21 (e) ~~Any~~ *Except as provided in subdivision (f), any copy of*  
22 records made available for inspection as copies and furnished upon  
23 request to the public or any public agency by the awarding body,  
24 the Division of Apprenticeship Standards, or the Division of Labor  
25 Standards Enforcement shall be marked or obliterated to prevent  
26 disclosure of an individual's name, address, and social security  
27 number. The name and address of the contractor awarded the  
28 contract or the subcontractor performing the contract shall not be  
29 marked or obliterated. Any copy of records made available for  
30 inspection by, or furnished to, a joint labor-management committee  
31 established pursuant to the federal Labor Management Cooperation  
32 Act of 1978 (29 U.S.C. Sec. 175a) shall be marked or obliterated  
33 only to prevent disclosure of an individual's name and social  
34 security number. A joint labor management committee may  
35 maintain an action in a court of competent jurisdiction against an  
36 employer who fails to comply with Section 1774. The court may  
37 award restitution to an employee for unpaid wages and may award  
38 the joint labor management committee reasonable attorney's fees  
39 and costs incurred in maintaining the action. An action under this  
40 subdivision may not be based on the employer's misclassification

1 of the craft of a worker on its certified payroll records. Nothing in  
2 this subdivision limits any other available remedies for a violation  
3 of this chapter.

4 *(f) Any copy of records made available for inspection as copies*  
5 *and furnished upon request to an agency included in, and for the*  
6 *purposes of, the Joint Enforcement Strike Force on the*  
7 *Underground Economy, as established pursuant to Section 329 of*  
8 *the Unemployment Insurance Code, or to a law enforcement agency*  
9 *investigating a violation of law, by the awarding body, the Division*  
10 *of Apprenticeship Standards, or the Division of Labor Standards*  
11 *Enforcement shall not be marked or obliterated to prevent*  
12 *disclosure of an individual's name, address, and social security*  
13 *number.*

14 ~~(f)~~  
15 (g) The contractor shall inform the body awarding the contract  
16 of the location of the records enumerated under subdivision (a),  
17 including the street address, city, and county, and shall, within five  
18 working days, provide a notice of a change of location and address.

19 ~~(g)~~  
20 (h) The contractor or subcontractor has 10 days in which to  
21 comply subsequent to receipt of a written notice requesting the  
22 records enumerated in subdivision (a). In the event that the  
23 contractor or subcontractor fails to comply within the 10-day  
24 period, he or she shall, as a penalty to the state or political  
25 subdivision on whose behalf the contract is made or awarded,  
26 forfeit twenty-five dollars (\$25) for each calendar day, or portion  
27 thereof, for each worker, until strict compliance is effectuated.  
28 Upon the request of the Division of Apprenticeship Standards or  
29 the Division of Labor Standards Enforcement, these penalties shall  
30 be withheld from progress payments then due. A contractor is not  
31 subject to a penalty assessment pursuant to this section due to the  
32 failure of a subcontractor to comply with this section.

33 ~~(h)~~  
34 (i) The body awarding the contract shall cause to be inserted in  
35 the contract stipulations to effectuate this section.

36 ~~(i)~~  
37 (j) The director shall adopt rules consistent with the California  
38 Public Records Act (Chapter 3.5 (commencing with Section 6250)  
39 of Division 7 of Title 1 of the Government Code) and the  
40 Information Practices Act of 1977 (Title 1.8 (commencing with

1 Section 1798) of Part 4 of Division 3 of the Civil Code) governing  
2 the release of these records, including the establishment of  
3 reasonable fees to be charged for reproducing copies of records  
4 required by this section.

5 SECTION 1. ~~Section 64.6 is added to the Labor Code, to read:~~

6 ~~64.6. Nothing in this code shall limit the authority of the~~  
7 ~~Attorney General or the district attorney of any county, either upon~~  
8 ~~his or her own complaint or the complaint of any person acting~~  
9 ~~for himself or herself or the general public, to prosecute actions,~~  
10 ~~either civil or criminal, for violations of this code, or to enforce~~  
11 ~~the provisions thereof independently and without specific direction~~  
12 ~~from the director.~~